IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4627 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL P GONDHA

Versus

EXECUTIVE ENGINEER MECHANICAL DIVISION

Appearance:

1. Special Civil Application No. 4627 of 1996

MR DG CHAUHAN for Petitioner No. 1

MR HEMANT M PRACHCHHAK, AGP for Respondent No. 1,3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 23/12/2004

ORAL JUDGEMENT

#. This petition under Article 226 of the Constitution of India challenges the order dated 16.5.1996, passed by

the respondent-authority, by which the earlier order dated 3.3.1993, granting pay-scale of Rs. 350-560 to the petitioner is cancelled. According to the petitioner, while passing the impugned order, dated 16.5.1996, no reasons have been given and the petitioner is not given opportunity of hearing nor any show cause notice is issued and, therefore, the impugned order is in violation of principles of natural justice and therefore, the same is required to be quashed and set aside.

#. It is the case of the petitioner that initially, the petitioner was appointed as Body Fitter and subsequently, by an order dated 4.3.1993, produced by the petitioner at Annexure:D to the petition, the petitioner was appointed as Body Fitter and given pay-scale of Rs. 350-560 in view of the fact that the petitioner had completed 5 years of service as daily rated Body Fitter and the said appointment of the petitioner was approved by the higher authority.

#. According to the petitioner, for a period of about three years, the petitioner continued to serve as Body Fitter and thereafter, the impugned order dated 16.5.1996 came to be passed by the respondent, whereby the earlier order dated 3.3.1993 is cancelled without giving any opportunity of hearing to the petitioner.

#. The learned advocate for the petitioner Mr. D.G. Chauhan, appearing for the petitioner has vehemently contended that the case of the petitioner is in clear violation of the principles of natural justice, unreasonable and in arbitrary exercise by the respondent authority, inasmuch as before cancelling the earlier order dated 3.3.1993, the respondent-authority has not given any reasons nor any show cause notice is given to the petitioner, which has resulted into economic loss and, therefore, the impugned order dated 16.5.1996 requires to be quashed and set aside as being violative of Article 14 of the Constitution of India.

#. The learned advocate for the petitioner has relied on the decision in the case of B.A. Brahmakshatriya, R.C. Technical Institute Vs. Director of Technical Education, reported in 2004 (1) G.L.H. 768 and the decision in the case of M.M. Patel Vs. State of Gujarat, reported in 2003 (1) G.L.H. 697 in support of his argument that if a decision is taken by the authority cancelling its earlier decision with regard to wrongful fixation of pay-scale, order of recovery cannot be made. The aforesaid decision of this Court has also relied on the decision of the Apex Court in the case of P.H. Reddy Vs. N.T.R.D., reported

in 2000(2) SLR 694.

#. Accordingly, the subject matter of this petition is also identical and the impugned order, cancelling the earlier order of fixation of pay-scale dated 3.3.1993 passed by the respondent-authority is also required to be quashed and set aside.

#. The learned AGP Mr. Hemant M. Prachchhak, appearing for the respondents-authorities has acceded to the position of law in this regard. However, he submitted that the authority has power to fix or revise or refix the pay-scale of an employee, as and when it is found that the pay-scale of an employee is fixed by applying wrong criterias or that the same is not in accordance with the Pay Rules as framed by the respondents-authorities.

#. Having heard the learned counsel for the parties and having perused the record of the case, it is clearly borne out that the impugned order dated 16.5.1996 passed by the respondent, cancelling its earlier order dated 3.3.93, by which the pay-scale of the petitioner was fixed in the pay scale of Rs.350-560, is passed without granting any opportunity of hearing to the petitioner or even no show cause notice was issued before taking the impugned decision. The impugned order does not reflect the reasons for passing such order and, therefore, even if any representation is to be made by the petitioner, no ground is available to the petitioner.

#. With regard to the case laws pressed into service by the learned advocate for the petitioner, this Court is in full agreement with the ratio laid down therein and no orders of recovery can be made while fixing, revising or refixing the pay-scale,particularly, when such pay fixation, granted by the authority is not at the behest of the employee or due to the mistake committed by the employee.

##. Under the circumstances, the impugned order dated 16.5.1996, passed by the respondent-authority being violative of principles of natural justice, requires to be quashed and set aside and accordingly it is quashed and set aside. The petitioner is protected by the interim order of this Court and recovery initiated on the basis of the impugned order dated 16.5.1996, is already stayed. Therefore, when the impugned order itself is quashed and set aside, no further order is required to be passed.

##. However, it is open for the respondent-authority to follow the procedure of law and after initiating the procedure with regard to issuance of show cause notice to the petitioner, appropriate order can be passed. In view of the findings and observations noted hereinabove, the impugned order is quashed and set aside and no recovery be made pursuant to the impugned order dated 16.5.1996 passed by the respondent-authority. Rule is made absolute accordingly in the above premises. No order as to costs.

[ANANT S. DAVE, J.]
pirzada/-